

JUDGE CASTEL

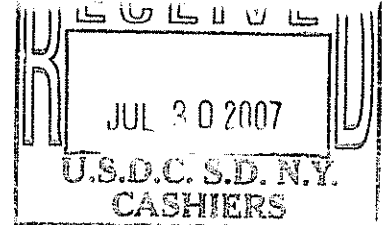
07 CV

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369-07PJG/PLS
FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff
80 Pine Street
New York, NY 10005
(212) 425-1900
(212) 425-1901 fax

Peter J. Gutowski (PG 2200)
Pamela L. Schultz (PS 0335)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
PROVENCE INVESTMENT INC.,

07 Civ.

Plaintiff,

-against-

VERIFIED COMPLAINT

MEWAH OIL SDN BHD a/k/a
MEWAH-OIL SDN BHD,
Defendant.

-----X

Plaintiff, PROVENCE INVESTMENT INC. OF LIBERIA (hereinafter "PROVENCE")
for its Verified Complaint against Defendant MEWAH OIL SDN BHD a/k/a MEWAH-OIL
SDN BHD (hereinafter "MEWAH"), alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the
Federal Rules of Civil Procedure in that it involves a claim for the breach of a maritime contract
of charter party. This case also falls under this Court's admiralty and maritime jurisdiction
pursuant to 28 U.S.C. §1333 and the Court's federal question jurisdiction pursuant to 28 U.S.C.
§1331. Federal jurisdiction also exists because the action arises under the New York Convention
on the Recognition and Enforcement of Foreign Arbitral Awards at 9 U.S.C. §201 et seq. and/or
the Federal Arbitration Act, 9 U.S.C. §1 et seq.

2. At all times material hereto, Plaintiff PROVENCE was and still is a foreign business entity duly organized and existing under the laws of a foreign country with an address at 80 Broad Street, Monrovia, Liberia.

3. At all times relevant hereto, Defendant MEWAH was and still is a foreign business entity duly organized and existing under the laws of a foreign country with an address at Lot 40, Section 4, FASA2A, Pulau Indah Industrial Park 42920, Pelabuhan Klang Selangor, Darul, Ehsan, Malaysia.

4. On or about August 4, 2006, Plaintiff PROVENCE, in the capacity as Owner of the M/V OLYMPICS I, entered into a maritime contract of charter party with Defendant MEWAH, as Charterer, for the carriage of a cargo of palm oils from Indonesia to Pakistan. A copy of the charter party is annexed as Exhibit A.

5. Plaintiff PROVENCE duly tendered the vessel into service under the charter, and a cargo of palm oil was carried to Pakistan, where it was discharged in October 2006.

6. Subsequent to the discharge, nine cargo receivers asserted claims in Pakistan against PROVENCE for alleged shortages of less than .5% of the bill of lading quantities. At present, the total of these claims against PROVENCE is \$44,181.50.

7. Under the terms of the charter party between PROVENCE and MEWAH, if any cargo shortage claims of less than .5% than the bill of lading quantities were asserted against PROVENCE, MEWAH was to settle the claims with the cargo receivers and/or the cargo receiver's insurers directly.

8. Contrary to the terms of the charter party, and in breach thereof, MEWAH has refused or otherwise failed to assume the responsibility to settle the cargo receivers' claims directly.

9. The charter party provides for the application of English law and all disputes between the parties are to be resolved by arbitration in London, where arbitration has already been commenced and PROVENCE specifically reserves its right to arbitrate the substantive matters at issue.

10. Under English law, including but not limited to Section 63 of the English Arbitration Act of 1996, costs including attorney fees, arbitrators' fees, disbursements and interest are recoverable as part of Plaintiff's claim.

11. As a direct consequence of MEWAH's failure to assume its responsibilities under the charter party, PROVENCE was obliged to retain legal counsel and incur legal fees and costs in order to defend the nine separate claims in the Pakistan proceedings, commence arbitration proceedings in London against MEWAH and bring these proceedings in order to obtain security for the claims.

12. This action is brought to obtain jurisdiction over MEWAH and to obtain security in favor of Plaintiff PROVENCE in respect to its claims against MEWAH and in aid of London arbitration proceedings.

13. This action is further brought to obtain security for any additional sums to cover Plaintiff's anticipated attorney fees and costs in the Pakistan proceedings and the arbitration and interest, all of which are recoverable as part of Plaintiff's claim under English law.

14. Plaintiff estimates, as nearly as can be computed, that the legal expenses and costs of defending the claims of the receivers, prosecuting the London arbitration and/or otherwise securing its claim will be \$54,750 and interest on its damages is estimated to be \$22,851.65 (calculated at the rate of 6% for a period of 7 years, the estimated time for completion of the proceedings in Pakistan as advised by counsel for Plaintiff in Pakistan).

Request for Rule B Relief

15. Upon information and belief, and after investigation, Defendant cannot be “found” within this District for the purpose of Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims, but Plaintiff is informed that Defendant has, or will shortly have, assets within this District comprising, *inter alia*, cash, funds, escrow funds, credits, debts, wire transfers, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or for the benefit of Defendant (collectively hereinafter, “ASSETS”), including but not limited to ASSETS in either of its names, to wit: MEWAH OIL SDN BHD a/k/a MEWAH-OIL SDN BHD or for its benefit, at, moving through, or being transferred and/or wired to or from banking institutions or such other garnishees who may be served with a copy of the Process of Attachment issued herein.

16. The total amount to be attached pursuant to the calculations set forth above is **\$121,783.15**.

WHEREFORE, Plaintiff PROVENCE INVESTMENT INC. prays:

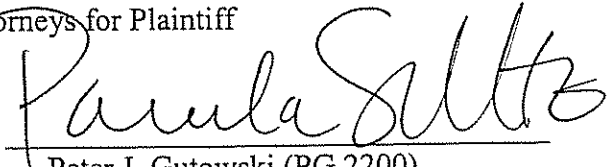
- a. That process in due form of law according to the practice of this Court may issue against Defendant citing it to appear and answer the foregoing;
- b. That if Defendant cannot be found within this District pursuant to Supplemental Rule B that all tangible or intangible property of Defendant up to and including **\$121,783.15** be restrained and attached, including, but not limited to any cash, funds, escrow funds, credits, debts, wire transfers, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or being transferred from or for the benefit of Defendant (collectively hereinafter, “ASSETS”), including but not limited to such

ASSETS as may be held, received, or transferred in either of its names or as may be held, received or transferred for its benefit, at, through, or within the possession, custody or control of such banking institutions and/or any such other garnishees who may be served with a copy of the Process of Maritime Attachment and Garnishment issued herein;

- c. That this Court retain jurisdiction over the matter for any further or supplemental proceedings as may be necessary, including but not limited to the recognition and enforcement of any judgment entered against the Defendant in the London proceedings; and
- d. For such other, further and different relief as this Court may deem just and proper in the premises.

Dated: New York, New York
July 30, 2007

FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff

By: 
Peter J. Gutowski (PG 2200)
Pamela L. Schultz (PS 0335)
80 Pine Street
New York, NY 10005
(212) 425-1900

ATTORNEY VERIFICATION

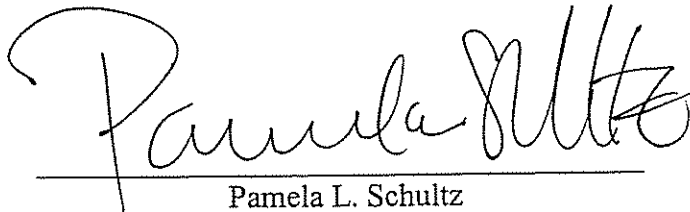
State of New York)
) ss.:
County of New York)

PAMELA L. SCHULTZ, being duly sworn, deposes and says as follows:

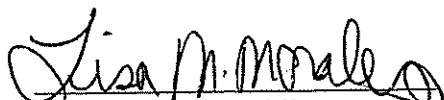
1. I am an associate with the law firm of Freehill Hogan & Mahar, LLP, attorneys for Plaintiff in this action, I have read the foregoing Verified Complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

2. The sources of my information and the grounds for my belief are communications, information and documentation provided by our client and/or by solicitors representing our client.

3. The reason this verification is made by an attorney and not by the Plaintiff is because the Plaintiff is a foreign entity, none of whose officers are presently within this Judicial District.


Pamela L. Schultz

Sworn to before me this
30 day of July 2007


Notary Public

Lisa M. Morales
Notary Public, State of New York
No. 01MO6162004
Qualified in the Bronx
Commission Expires Feb. 28, 2011

Message Printed on 8/4/2006 1:40:35 PM by PK RefNum:1030438 From/To: Naderkoorn S

TO COSTAS MOUTZOURIDIS

FM NEDERKOORN SHIPBROKING PTE LTD., SINGAPORE

REF JQ30/04.08.2006

RE MT OLYMPICS I OOS / MEWAH
 MIN 28,750 UP TO 2 PCT MORE IN CHOPT
 1-4 GRADES WVNS CRUDE AND/OR RED PALM OIL PRODUCTS
 EX DUMAI (LUBUK GAUNG) A/O PORT KLANG (W) A/O PASIR GUDANG
 TO KARACHI AND PORT QASIM
 (MAX 20,000 MT IF PORT QASIM, BALANCE 8,750 MT FOR KARACHI)
 05-20 SEPTEMBER 2006 LAYCAN
 CP DATED 04TH AUGUST 2006

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 ++ STRICTLY P N C AND NON-REPORTABLE ++

ROEMAIL AND YAHOO EXCHANGES LAST TODAY - WE ARE PLEASED TO
 RECAP CLEAN FIXTURE AS FOLLOWS :

- CHARTERPARTY DATED 04TH AUGUST 2006

- CHARTERER MEWAHOLEO INDUSTRIES SDN BHD AND/OR
 MEWAH-OILS SDN BHD AND/OR NOMINEE(S).
 (IF NOMINEE(S), MEWAHOLEO INDUSTRIES SDN BHD TO
 REMAIN FULLY RESPONSIBLE FOR THE PERFORMANCE OF
 THIS CHARTERPARTY)

- OWNER PROVENCE INVESTMENTS INC., LIBERIA

- VESSEL MT OLYMPICS I OOS
 BUILT 1980
 FLAG PANAMA
 CLASS RUSSIAN MARITIME
 SDWT 29,995.00 MT
 SDRAFT 11.12 M
 GRT/NRT 17,996 / 10,583
 LOA 178.86 M
 BEAM 25.30 M
 COILS MILD STEEL HEATING COILS
 COATINGS MILD STEEL TANKS - NO COATINGS
 TANK CAPACITY 32,717.30 CBM AT 98 PCT (INCLUDING SLOPS)

LAST CARGO VEGOIL PRODUCTS
 2ND LAST MOLASSES
 3RD LAST CASOIL

----- End of Message -----

EXHIBIT

tabbles

A

- CARGO

MIN 28,750 MT UP TO 2 PCT MORE IN CHOPT, AS FAR AS VESSEL CAN LOAD BASIS 11.50 METRES DRAFT ON ARRIVAL AT KARACHI.

AND BASIS 9.00 METRES DRAFT ON ARRIVAL AT PORT QASIM, VESSEL CAN LOAD MAX ABOUT 20,000 MT OF CARGOES.

1-4 GRADES WVNS CRUDE AND/OR RBD PALM OIL PRODUCTS IN BULK. NO ACIDS / NO CHEMICALS.

MAX FFA 5.0 PCT FOR CRUDE PALM OIL PRODUCTS AND
MAX FFA 2.5 PCT FOR REFINED PALM OIL PRODUCTS

~~IF STEARIN, IT HAS TO BE LOADED OVER THE TOP AND TO BE DISCHARGED BY PORTABLE PUMPS AT CHARTERER'S EXPENSE.~~

INTENTION : RBD PALM OIL
RBD PALM OLEIN
CRUDE PALM OIL

(A) NON-COMMINGABLE WITH OTHER CHARTERERS' CARGOES
EVEN THOUGH OF SIMILAR GRADES AND DESTINATION.

- LOADING

1SP 1SB DUMAI (LUBUK GAUNG) AND/OR
1SP 1SB PORT KLANG (WEST) AND/OR
1SP 1SB PASIR GUDANG

(A) EXACT LOAD PORT(S) DECLARABLE FIVE (5) DAYS
PRIOR TO ARRIVAL AT THE 1ST LOAD PORT.

- DISCHARGING

1SP 1SB KARACHI (11.50 M MAX DRAFT) AND 1SP 1SB
PORT QASIM, WHERE OWNER IS AWARE THAT MAXIMUM DRAFT
AT PORT QASIM IS 9.00 METRES.

(A) MAX QUANTITY FOR PORT QASIM DISCHARGE IS
20,000 MT

(B) ROTATION : KARACHI FIRST THEN PORT QASIM

- LAYCAN

05-20 SEPTEMBER 2006 LAYCAN

(A) ITINERARY (AGW UCE WOG):

ETA IRAN	15-16 AUGUST	DISCH
ETS IRAN	20-22 AUGUST	DISCH
ETA DUMAI (LG)	04-07 SEPTEMBER	LOAD
ETA PORT KLANG(W)	04-07 SEPTEMBER	LOAD
ETA PASIR GUDANG	04-07 SEPTEMBER	LOAD
ETA KARACHI	17-18 SEPTEMBER	DISCH

(B) IF IT BECOMES APPARENT THAT THE VESSEL WILL MISS HER CANCELLING DATE, OWNER TO INFORM CHARTERER IMMEDIATELY AND TO PROPOSE NEW LAYCAN. CHARTERER, WITHIN ONE WORKING DAY, WILL EITHER ACCEPT THE NEW LAYCAN OR WILL CANCEL THE VESSEL WITHOUT ANY CLAIMS FROM EITHER PARTIES.

- LAYTIME 150 MTPH LOAD - INDONESIA
150 MTPH LOAD - MALAYSIA
100 MTPH DISCHARGE

(A) ALL LAYTIME TO BE SHINC REVERSIBLE.

- FREIGHT USD 39.00 PMT BASIS 2 LOAD / 2 DISCHARGE
USD 38.00 PMT BASIS 1 LOAD / 2 DISCHARGE

- PAYMENT FULL FREIGHT IS PAYABLE IN FULL WITHOUT DEDUCTION BY IRREVOCABLE T/T AGAINST OWNER'S FAX INVOICE IN US DOLLARS WITHIN 3 BANKING DAYS AFTER COMPLETION OF LOADING DIRECT TO OWNER'S DESIGNATED BANK ACCOUNT.

- TTL COMM 2.5 PCT ON F/D/D TO NSPL TO BE DEDUCTED AT SOURCE

- DEMURRAGE USD 19,000 PDPR

- Extra War risk insurance and crew bonus clause :

If the ports nominated by the charterer to load or discharge cargo are declared as war risk zones for insurance purposes and/or the ship must transit waters declared as war risk zones for the same purposes and the owner incurs extra war risk premium and/or crew bonus and/or crew insurance expenses then said premiums and/or expenses to be paid by charterer prorata on the basis of the proration of charterer's cargo to all other cargo being loaded or discharged at charterers nominated ports. Payments will be due seven (7) days after presentation of OWNER'S INSURANCE BROKERS INVOICE for extra war risk premium and Owner's invoice for crew bonus and/or crew insurance expense. If the suez or panama canals are declared as war risk zones for insurance purposes and the owners incur extra war risk premiums and/or crew bonus expenses then said premiums and/or expenses to be paid by the charterer's prorata on the proration of charterer's cargo to all other cargo onboard at time of canal transit.

- C/P FORM VEGOILVOY CP WITH FOLLOWING ADDITIONS/ALTERATIONS :

1. FREIGHT PAYABLE IN FULL, EXCLUDING BANK CHARGES, TO OWNER'S NOMINATED BANK ACCOUNT WITHIN 3 BANKING DAYS AFTER COMPLETION OF LOADING. OWNER TO RELEASE 'FREIGHT AS PER C/P' BS/L WITHIN 48 HOURS AFTER COMPLETION OF LOADING PROVIDED SHIPPERS/SUPPLIERS SUBMIT SUCH BS/L TIMELY TO OWNER'S AGENTS AT LOAD PORTS. OWNER TO RELEASE

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1

CHARTERER'S BANK THAT FREIGHT HAS BEEN IRREVOCABLY REMITTED TO OWNERS' ACCOUNT AS INVOICED, AND THE FIRST SET OF BS/L (IF ANY) HAS BEEN SURRENDERED IN FULL TO OWNER OR THEIR AGENTS.

OWNER'S BANKING DETAILS :

PAYABLE TO : HSBC BANK PLC
PIRAEUS BRANCH
93, AKTI MIAOULI GR-185 38
PIRAEUS
GREECE

SWIFT ADDRESS : MIDLGRAA

USD ACCOUNT NO. : 1-007061-071

IN FAVOUR OF : PROVENCE INVESTMENTS INC

REFERENCE : MT OLYMPICS I OOS/MEWAH/CP 04.08.2006

2. DEMURRAGE CLAUSE :-

~~A) THE CHARTERER SHALL PROMPTLY NOTIFY THE OWNER OF ANY OBJECTIONS~~
TO ANY DEMURRAGE CLAIM UNDER THIS CHARTERPARTY. UNLESS THE OWNER HAS RECEIVED SUCH NOTIFICATION WITHIN 30 DAYS AFTER THE CHARTERER'S RECEIPT OF THE CLAIM, THE CHARTERER SHALL BE DEEMED TO HAVE WAIVED OBJECTION TO THE CLAIM WHICH SHALL BE DEEMED ACCEPTED BY THE CHARTERER AS PRESENTED.

B) THE CHARTERER SHALL PAY ANY UNDISPUTED DEMURRAGE WITHOUT DELAY, BUT IN ANY EVENT NOT LATER THAN 30 DAYS AFTER THE CHARTERER'S RECEIPT OF THE DEMURRAGE CLAIM.

C) PAYMENT OF DEMURRAGE SHALL BE MADE BY THE CHARTERER WITHOUT ANY SET OFF OR DEDUCTION FOR ANY COUNTERCLAIM, INCLUDING BUT NOT LIMITED TO ANY CARGO CLAIM.

3. TAXES/DUES ON CARGOES AND/OR FREIGHT TO BE FOR CHRTR'S ACCOUNT. TAXES/DUES ON VESSEL/WHARFAGE/DOCKAGE/QUAY DUES TO BE FOR OWNER'S ACCOUNT.

4. OWNER'S AGENTS AT BOTH ENDS, BUT OWNER TO APPOINT M/S INTRA-LINK AGENCIES AT LOAD PORT(S), AND M/S ALPINE MARINE SERVICES AT DISCHARGE PORT(S), PROVIDED COMPETITIVE.

5. OWNER NOT TO BE RESPONSIBLE FOR ANY LOSS / SHORTAGE OF CARGO INCURRED OUTSIDE OF SHIP'S MANIFOLD INCLUDING THE 0.5 PCT TOLERANCE LOSS ALLOWABLE IN THE VEGOIL TRADE.

IF ANY SHORTAGE CLAIMS AGAINST OWNERS ARE WITHIN THE 0.5 PCT TOLERANCE LOSS, CHARTERER IS TO SETTLE THE CLAIMS WITH RECEIVERS OR RECEIVERS' INSURANCE COMPANIES DIRECTLY.

6. VSL'S LAST 3 CARGOES CLEAN, UNLEADED. 'FOSFA INTERNATIONAL LIST OF BANNED IMMEDIATE PREVIOUS CARGOES' WITH EFFECT FROM 1ST OCTOBER 2004 TO APPLY.

VESSEL'S LAST THREE PREVIOUS CARGOES SHALL NOT BE ETHYLENE DICHLORIDE AND/OR STYRENE MONOMER.

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